

SOUTHERN UNION PRODUCTION COMPANY

IBLA 76-537

Decided September 23, 1976

Appeal from decisions of the Nevada State Office, Bureau of Land Management, rejecting 14 noncompetitive geothermal lease applications in whole or in part.

Set aside and remanded.

1. Administrative Procedure: Administrative Review -- Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease

A decision by the Bureau of Land Management to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown.

2. Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease -- Geothermal Leases: Environmental Protection: Generally

When the reason given for the rejection of noncompetitive geothermal lease applications is that the lands lie within an area associated with historic trails, and the records indicate that the Bureau of Land Management has approved leasing similar areas subject to protective stipulations, the decision will be set aside and the case remanded for further consideration to determine whether these lands should be leased with protective stipulations.

3. Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease -- Geothermal Leases: Environmental Protection: Generally

When the reason given by the Bureau of Land Management for the rejection of noncompetitive geothermal lease applications is that the lands lie within a critical natural area, but the Environmental Analysis Record recommendations to exclude lands from leasing have not been uniformly followed and the Record itself describes various protective measures which would mitigate adverse environmental impact, the decisions will be remanded to determine whether these lands should be leased with protective stipulations.

4. Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease -- Geothermal Leases: Environmental Protection: Generally

When the Bureau of Land Management rejects geothermal lease applications on the mistaken basis that the lands are situated within a particular critical natural area excluded from leasing, the cases must be remanded for further consideration because the decisions fail to disclose a proper basis for rejection.

APPEARANCES: John V. A. Sharp, attorney-in-fact, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Southern Union Production Company appeals from various decisions in February 1976, of the Nevada State Office, Bureau of Land Management (BLM), rejecting entirely or in part 14 noncompetitive geothermal lease applications. 1/ The applications were rejected because the lands either "lie within a critical natural area (Black Rock Desert)" or "are within an area associated with historic trails."

1/ The applications and the lands applied for which were rejected are listed in the Appendix.

Most but not all the BLM decisions state that an Environmental Analysis Record (EAR) has recommended against leasing the land. 2/

Appellant argues that the environmental values of the lands in question can be adequately protected with protective stipulations in the leases. It indicates various parts of the EAR which support this argument and points to similar situations where such stipulations have been used. Finally, it suggests that the EAR failed to consider adequately the importance of geothermal development and that the EAR arbitrarily recommended exclusion of large areas without adequately considering alternative sites and with insufficient evidence as to the location of historic and archaeological sites.

[1] Generally, a decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decision is shown. Eason Oil Co., 24 IBLA 221 (1976); cf. Jack M. Vaughn, 25 IBLA 303 (1976); Boulder City Aero Club, 21 IBLA 343 (1975). In reaching its decision, BLM may follow the recommendations in an EAR. However, BLM should set forth in its decision appropriate references to the particular EAR and other relevant documents in order to provide sufficient basis for its determination. As we noted above, some of the decisions on appellant's applications do not mention the EAR; the others do not refer to any specific portion. Such references are particularly important when, as discussed below, BLM has not uniformly followed the recommendations of the EAR.

[2] The Board has recently considered the question of whether geothermal lease applications may be rejected because the lands applied for lie within areas associated with historic trails as described in EAR No. 27-020-4-99. Christian F. Murer, 24 IBLA 383 (1976); Kirk Greene, 24 IBLA 262 (1976); Richard C. Hoefle, 24 IBLA 181 (1976). In those decisions, the Board found that BLM had approved leasing some lands within such areas, subject to protective stipulations. The cases were remanded to BLM to determine whether protective stipulations would be appropriate.

The same reasons warranting a remand in the above decisions apply to those applications in this appeal which were rejected because the lands applied for lie within areas associated with

2/ The report is ENVIRONMENTAL ANALYSIS RECORD, OIL AND GAS/GEOTHERMAL LEASING, WINNEMUCCA DISTRICT, SONOMA-GERLACH RESOURCE AREA, BUFFALO HILLS PLANNING UNIT, EAR No. 27-020-4-99, June 1975. The report is filed in Case File N-11022.

historic trails. There is no indication that BLM considered issuing leases to appellant subject to protective stipulations. Therefore, we set aside the BLM decisions rejecting the following geothermal lease applications: N-12225, with respect to sec. 24, T. 33 N., R. 23 E., M.D.M.; N-12226, with respect to sec. 19, T. 33 N., R. 24 E., M.D.M.; N-12227; N-12228; N-12229; and N-12240. We remand these cases to BLM for a determination whether the leases may be issued subject to stipulations for the protection of historic trails. Appellant has disputed the location of the trails. It should furnish its information to the BLM State Office for consideration. If BLM adheres to its original decisions rejecting the applications, it should clearly state the reasons justifying such action. Christian F. Murer, supra; Kirk Greene, supra; Richard C. Hoefle, supra.

[3] The Board has not been previously presented with the direct issue of the refusal by BLM to lease lands within a critical natural area designated by EAR No. 27-020-4-99, namely the Black Rock Desert. These lands are described in the EAR at page 85 under the section entitled "Recommended Areas to be Excluded from Leasing." This section of the EAR also recommends the exclusion of lands in other areas, including the historic trails.

In a December 18, 1975, memorandum, BLM determined that some of the lands in an excluded-from-leasing category will be adequately protected by stipulations, although specifically excluding the Black Rock Desert area. Christian F. Murer, supra at 386. The EAR describes various protective measures available which would mitigate adverse environmental impact. EAR, supra at 79-80. In order to properly reject geothermal lease applications which describe lands within the Black Rock Desert critical natural area, BLM must state in its decision adequate reasons for accepting the recommendation of the EAR, particularly when it has not followed the same recommendation in other areas. See Christian F. Murer, supra at 385-86. To only state, as BLM does in rejecting appellant's applications, that the lands lie within a critical natural area is merely conclusory and provides insufficient analysis. See Richard C. Hoefle, supra at 183.

We, therefore, set aside the decisions of BLM in the following applications of appellant and remand the cases for further consideration: N-12219; N-12221; N-12222; N-12233; N-12236; N-12237; N-12238; and n-12239. On remand, BLM should determine whether protective stipulations are appropriate in the Black Rock Desert area and, if not, clearly state its rationale for excluding these lands from geothermal leasing. See Christian F. Murer, supra at 385-86; Richard C. Hoefle, supra at 185.

[4] In two of its decisions, BLM rejected appellant's applications because the following lands lie within the Black Rock Desert critical natural area: in application N-12225, secs. 8, 9, and 17, T. 33 N., R. 24. E., M.D.M.; and in application N-12226, sec. 18, T. 33 N., R. 24 E., M.D.M. No land in T. 33 N., R. 24 E., is listed in the EAR (see p. 85) as being within the Black Rock Desert area recommended to be excluded from leasing. We are not aware of any supplemental list which recommends that land in this township be excluded from leasing for this reason, although parts of the township appear to be crossed by historic trails. Without information in the record that the lands are in the critical natural area, these decisions appear to be based on a mistaken factual premise. Therefore, BLM has not shown a proper basis for rejection of the applications. Kirk Greene, 24 IBLA 113 (1976). These decisions are set aside and the cases are remanded for further consideration. In the event BLM determines on remand that this land is crossed by historic trails or should be included in the Black Rock Desert critical natural area, action taken on these applications should be consistent with our discussion above.

We remind appellant that should BLM again reject any of its geothermal lease applications, Southern Union will have the burden of showing on appeal that exploration and development activities will not adversely affect the areas concerned. Christian F. Murer, *supra* at 386; Kirk Greene, 24 IBLA 113, 114 (1976); cf. Eason Oil Co., *supra* at 225-26. It may, of course, submit to the BLM State Office any information and reasons to support its position that leasing these lands would be in the greater public interest than non-leasing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded for further consideration consistent with this opinion.

Joan B. Thompson
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

APPENDIX

| <u>Application</u> | <u>Land Described Therein</u> | |
|--------------------|---|-------------------------------|
| N-12219 | secs. 9, 10, 16 and 17, T. 35 N., R. 26 E., M.D.M. | |
| N-12221 | secs. 13, 14, 15 and 24, T. 35 N., R. 26 E., M.D.M. | |
| N-12222 | secs. 20, 21, 22 and 23, T. 35 N., R. 26 E., M.D.M. | |
| N-12225 | sec. 24, T. 33 N., R. 23 E., M.D.M. secs. 8, 9, and 17, T. 33 N., R. 24 E., M.D.M. | |
| *N-12226 | secs. 18 and 19, T. 33 N., R. 24 E., M.D.M. | |
| *N-12227 | secs. 26, 34 and 35, T. 32 N., R. 22 E., M.D.M. | |
| N-12228 | secs. 35 and 36, T. 31 1/2 N., R. 22 E., M.D.M. sec. 36, T. 32 N., R. 22 E., M.D.M. sec. 30, T. 32 N., R. 23 E., M.D.M. | |
| N-12229 | secs. 1, 2, 11 and 12, T. 31 N., R. 22 E., M.D.M. | |
| N-12233 | secs. 27 and 34, T. 37 N., R. 26 E., M.D.M. | |
| N-12236 | secs. 19, 30, 31 and 35, T. 36 N., R. 26 E., M.D.M. | |
| N-12237 | secs. 3 and 4, T. 35 N., R. 26 E., M.D.M. secs. 27 and 28, T. 35 1/2 N., R. 26 E., | M.D.M. |
| N-12238 | secs. 6 and 7, T. 35 N., R. 27 E., M.D.M. 1/2 N., R. 27 E., | secs. 29 and 32, T. 35 M.D.M. |
| N-12239 | secs. 1, 2, 11 and 12, T. 35 N., R. 26 E., M.D.M. | |
| *N-12240 | sec. 25, T. 32 N., R. 22 E., M.D.M. | |

* The applications were only rejected in part as to those lands described above.

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I agree with the majority decision. The Environmental Analysis Record contains several conclusions which may be applicable in some degree to areas excluded from leasing, as well as those on which the Record states that geothermal development should be permitted. The need for additional power is critical. "[G]eothermal energy is a dissipating resource which is being wasted by failure to utilize this potential." Id. at 96. "No serious unavoidable adverse environmental impacts are expected from exploration activities." Id. at 92. During development "compliance with lease and GRO orders will prevent serious adverse impacts * * *." Id. at 94. "While geothermal development will impose some unavoidable adverse environmental impacts, it appears to have the potential of being less environmentally damaging than other power generating systems using coal, oil, or nuclear energy sources." Id. at 95. "Normal land uses of the area such as recreation, livestock grazing and hunting * * * could return to predevelopment levels after production stops and the areas are restored." Id. at 99. "A decision not to lease could seriously hamper efficient development of the resource on private land due to the 'checkerboard' land ownership pattern. Companies now exploring and leasing geothermal resources on alternate private sections * * * have been doing so with the expectation that adjoining NRL would also become available to round out their potentially economic production units. Also, a substantial loss in lease revenue and possible loss in production royalties would result." Id. at 100.

The Report finds that the proposed leasing "is not a major Federal action which would significantly affect the quality of the human environment * * *." Id. at 103. The record does not clearly show in what respect inordinate damage to the Black Rock Desert or the historic trails would be likely to result.

Joseph W. Goss
Administrative Judge

